

### **REMARKS**

This Amendment is made to the Office Action dated September 9, 2003 and accompanies a Request for Continued Examination (RCE), submitted herewith. This Amendment also addresses the Examiner's statements made in the Advisory Action dated November 25, 2003. Claims 1, 3, 4, 6-11, and 13-31 are pending in this application. New claims 32-35 are being presented for consideration. Reconsideration of the rejected claims is respectfully requested.

Applicant strongly disagrees with the Examiner's treatment of the prior art that has been cited against the rejected claims. In rejecting the pending claims, the Examiner has selectively colored stent patterns appearing in the cited art to achieve a desired structural element while completely disregarding the unambiguous disclosure of the prior art which clearly and specifically identifies the elements of the stent pattern disclosed in the cited prior art. As a result, Applicant believes that the Examiner has simply used the pending claims as a roadmap to recreate and find the claimed stent pattern in the prior art. In this regard, the Examiner has disregarded the teachings and disclosure of the cited references which, if properly construed and read without the benefit of the pending claims, fail to disclose the claimed stent pattern of the rejected claims. The Examiner also has been inconsistent in identifying the same pattern disclosed in the cited references by characterizing the exact same pattern as either a W-shaped or V-shaped element, whenever needed, in an attempt to achieve Applicant's claimed pattern. This practice completely disregards the clear teachings of the prior art which identified the elements as W-shaped elements and shows that the Examiner has impermissibly relied on Applicant's pending claims as a road map to allow the Examiner to selectively color whatever element is needed to achieve the claimed pattern.

The Examiner has rejected claims 1, 3, 4, 6-11, 13-19 and 21-23 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application No. US 2001/0016770A1 to Allen et al (the "Allen application"). In the Office Action, the Examiner has reproduced FIG. 8 from the Allen application and has selectively colored various shapes of the stent pattern in an attempt to reconstruct Applicant's invention. With regard to claims 1, 3-4, 6-7, 8-10, 17-19 and 21-22, the Examiner has colored in red V-shaped portions and portions of the stent pattern that the Examiner considers to be W-shaped peak portions. The Examiner has likewise colored in green V-shaped portions and portions of the stent pattern that the Examiner considers to be W-shaped valley portions. However, in selectively coloring the stent pattern, the Examiner has disregarded the disclosure of the Allen application that specifically identifies the various elements of the stent pattern which constitute a peak and valley portion.

Referring specifically to the disclosure relating to the embodiment shown in reproduced FIG. 8, the Allen application clearly defines alternating peak portions with the numeral 52 and valley portions with the numeral 54. The Allen application, at column 3 [0040] states as follows:

"In this embodiment, each peak portion 52 or valley portion 54 is reinforced by reinforcing member 44 extending across bend 56 to interconnect struts 58."

Each reinforcing member 44 extends across connecting struts 58 which form each peak portion 52 or valley portion 54 of the embodiment of FIG. 8. The Examiner, in an attempt to duplicate Applicant's claimed invention, has merely traced portions of the cylindrical element 12 and portions of the reinforcing member 44 to create what appears to be a W-shape portion, claiming that it constitutes either a peak portion or valley portion. However, the reinforcing member 44 used in the Allen application clearly is

shown and described as a connecting link which connects the struts that form either the peak portion or valley portion of the cylindrical element 12. Accordingly, the W-shape highlighted in red or green by the Examiner can not constitute a peak or valley portion of the cylindrical element since the uncolored portion attached to the colored W-shaped portion defines the respective peak or valley portion of the cylindrical element. At best, the portion of the stent pattern which the Examiner has colored and identified as a W-shaped pattern constitutes an intermediate strut which lies adjacent to a peak portion or valley portion of the cylindrical element. However, it is this uncolored portion which forms the peak or valley. Therefore, this portion of the cylindrical element, which the Examiner has carefully colored, cannot define a peak or valley since there is the presence of struts (the uncolored portion) which constitutes the peak or valley. Since the claims at issue require a W-shaped peak or valley portion, the portion colored by the Examiner simply cannot define a peak or valley. The presence of additional struts which, when read in context with the Allen application, constitute the peak or valley in that portion of the stent pattern simply cannot be ignored. Applicant respectfully requests the Examiner to withdraw the § 102(e) rejection based on the Allen application.

The Examiner also has identified a “connecting member” in the Allen application by the color yellow. However, the Examiner disregards the specification of the Allen application which identifies the interconnecting member by the numeral 50. The portion of the stent pattern which the Examiner has colored yellow is clearly identified as either a valley portion 54 or a reinforcing member 44 in the Allen application. Again, Applicant believes that the Examiner's characterization of a portion of a valley portion or the reinforcing member as an interconnecting member simply ignores the disclosure of the Allen application. However, Applicant has amended the presently rejected claims by adding the recitation that the interconnecting member is substantially linear shaped.

Accordingly, for this reason alone, the Examiner should withdraw the Allen application as an anticipatory reference.

The Examiner has rejected claims 1, 3, 6, 8, 9, 11, 17, 18 and 21-31 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,935,162 to Dang, et al. (the "Dang patent"). The Examiner has reproduced FIG. 6 from the Dang patent and has again selectively colored portions of the strut pattern in order to recreate the particular element recited in Applicant's claimed stent pattern. In doing so, the Examiner has completely disregarded the disclosure of the Dang patent. While the Dang patent shows a plurality of W-shaped members appearing in the stent pattern of FIG. 6, the Dang patent does not show V-shaped peaks and valleys as suggested by the Examiner. In fact, the Dang patent does not even utilize the term V-shaped or U-shaped in connection with its description of the various shaped elements which make up each cylindrical section. For that reason, the Examiner's selective coloring of a W-shaped portion in FIG. 8 of the Dang patent totally disregards the teaching of the Dang patent in an attempt to reconstruct Applicant's invention. Contrary to the Examiner's statements in the Advisory Action, one skilled in the art would read the Dang patent as having only W-shaped portions in the stent pattern, as is specifically disclosed and stated in the Dang patent. The V-shaped portion which the Examiner contends appears in the Dang patent are improperly created by using the pending claims as a road map, by selectively coloring W-shaped portions to appear as V-shaped portions, and by completely disregarding the clear disclosure of the Dang patent.

Moreover, the Examiner has been inconsistent in identifying similar structures which appear in the same cylindrical sections appearing in FIG. 6 of the Dang patent. Referring specifically to page 3 of the final Office Action, in the topmost cylindrical section, identified by the numeral 220a, the Examiner has colored the W-shaped peak portion at the far left in red while selectively coloring the exact structure appearing on the

far right of this same cylindrical section 220a in green and characterizing that same structure as a V-shaped valley portion. Applicant submits that the Examiner's selective coloring of only a portion of the exact same structure in green in order to attempt to create a V-shaped valley portion completely disregards the disclosure of the Dang patent and is improper. Moreover, since a W-shape inherently includes a V-shape, the Examiner's selective coloring of only the V-shape of the W-shaped portion provides little appreciation of the scaffolding function accomplished by a W-shaped portion or the reasoning for selectively placing a W-shaped portion within a stent pattern.

The Examiner's inconsistency in improperly coloring the W-shaped elements appearing in the Dang patent is even more evident from the positions the Examiner has taken earlier in the prosecution of this case. In the final Office Action, specifically at page 3, the Examiner has reproduced Fig. 6 from the Dang patent and colored the W-shaped peak portion appearing in the topmost cylindrical section of 220a in red to indicate that it is a W-shaped portion. Immediately adjacent to this W-shaped portion is a selectively colored portion appearing in green. In the final Office Action, the Examiner indicates that this is a V-shaped peak portion. However, reference is made to the Office Action of February 25, 2003, specifically to page 4, which shows this same Fig. 6 reproduced from the Dang patent but colored differently by the Examiner. In the Office Action of February 25, 2003, this same element which is adjacent to the topmost W-shaped portion of the topmost cylindrical section 220a has been identified as a W-shaped valley portion and colored in red by the Examiner. Thus, in two separate Office Actions, the Examiner has characterized the same element as a W-shaped portion or V-shaped portion, whatever is needed to recreate the claimed stent pattern. These inconsistencies show that the Examiner has improperly interpreted the Dang patent and has simply selectively colored and characterized elements appearing in the Dang patent

as may be needed to create the appearance of the claimed stent pattern of Applicant's invention in the Dang patent.

The various components disclosed in FIG. 6 of the Dang patent are clearly identified in the following passage from the Dang patent:

"The cylindrical sections 222 are preferably arranged such that the W-shaped elements 230 in adjacent cylindrical sections 220 alternate between pairs of W-shaped elements 230 that open towards each other and pairs of W-shaped elements 230 that open away from each other when moving around the perimeter or circumference of the stent 210 (i.e., transverse to the axis 214 or in the hoop direction). The pairs of W-shaped elements 230 that open towards each other from adjacent cylindrical sections 220 are connected by tie members 250 to form cells 240 in a manner similar to that described above with respect to stents 10 and 110. (Column 7, lines 55-65.)

Therefore, the portion of the strut pattern which has been colored red by the Examiner is not a V-shaped peak portion or a V-shaped valley portion, but rather, as is clearly identified in the above passage, a W-shaped portion. Applicant thus believes that the Examiner's selective coloring of portions of the stent pattern of FIG. 6 is an attempt to impermissibly reconstruct Applicant's claimed invention without giving proper consideration of the disclosure of the Dang patent. Applicant respectfully requests the Examiner to withdraw the §102(b) rejection based on the Dang patent as applied to the claims at issue.

In view of the foregoing, it is respectively urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at 310-824-5555 to facilitate prosecution of this application, if necessary.